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IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1932**

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## No. 315

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KARL F. VOEHL, PETITIONER,

*vs.*

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

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## BRIEF FOR RESPONDENT.

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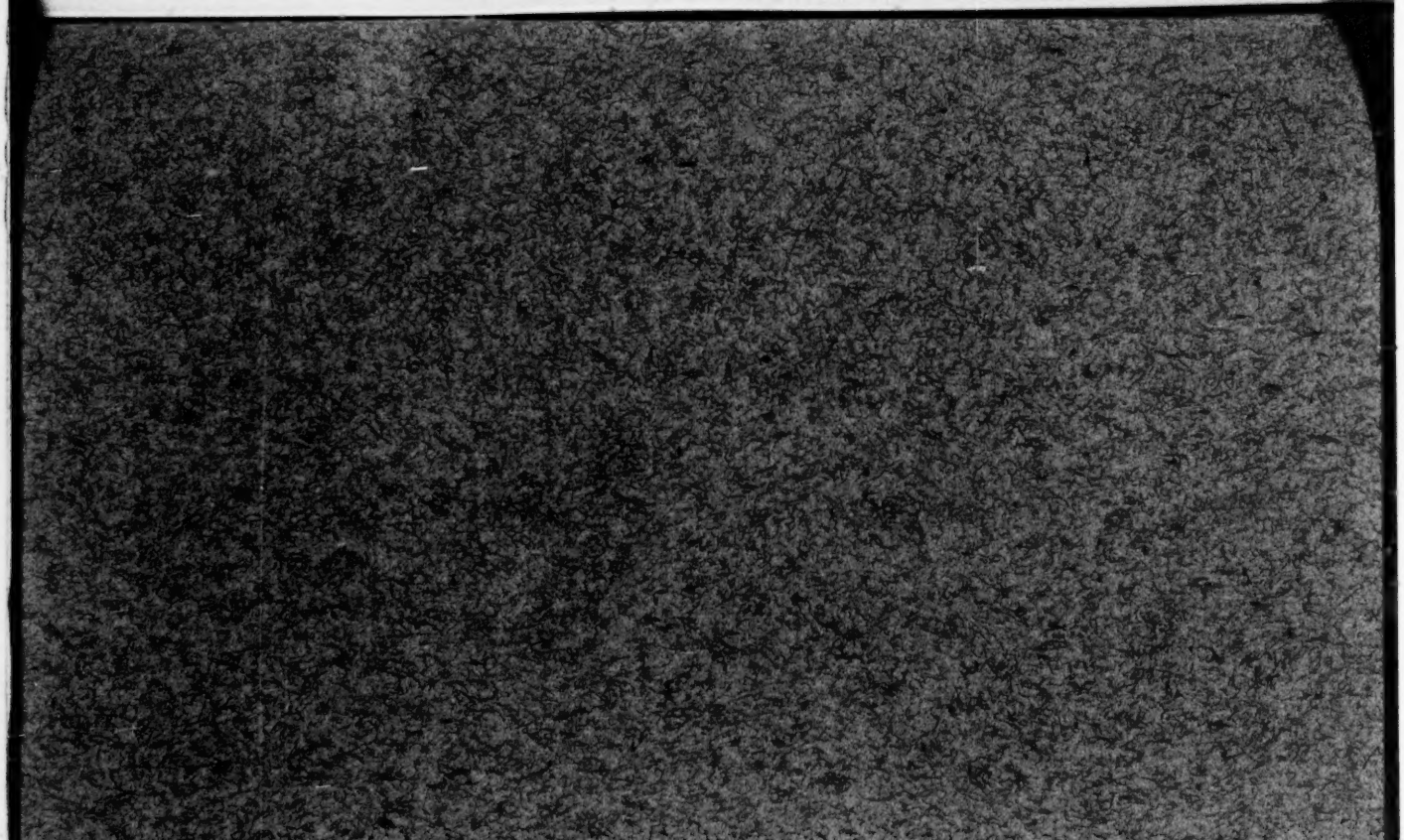

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### Short Statement.

Pursuant to Section 21 (*b*) of the Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stats. 1424), which was made applicable to certain employments in the District of Columbia by Act of Congress approved May 17, 1928 (45 Stats. 600), hereinafter described as the "Compensation Act," the respondent, Indemnity Insurance Company of North America, with which the National

Electrical Supply Company carried its compensation insurance, filed a bill in equity to enjoin the enforcement of an award made by Deputy Commissioner Hoage in favor of Karl F. Voehl, petitioner, who was an employee of the Supply Company (R. 1-7). A transcript of the testimony taken before the Deputy Commissioner was attached as an exhibit to the bill (R. 9-52).

It appears from the allegations of the bill and from the exhibit that Voehl, employed by the Supply Company to supervise the handling of refrigerators at its warehouse, was injured on Sunday, April 6, 1930, at 8:30 a. m., while on his way from his home in Maryland to his employer's warehouse in the District of Columbia. He was driving *his own automobile,* which overturned as a result of a defect in the steering gear, at 52nd Street and Central Avenue N. E., in the District of Columbia, *several miles from his place of employment,* 1328 New York Avenue N. W. (R. 2, 18).

The main object of the trip was to get a load of ashes to dump in a mudhole near Voehl's home (R. 37-38). Voehl stated that he also intended to clean up some trash at the warehouse (R. 50), although it was the duty of his subordinates to do such work (R. 48-49).

The bill concluded with an allegation that Voehl's injury did not arise out of or in the course of his employment; that his claim did not come within the provisions of the Compensation Act; that the findings of the Deputy Commissioner were not supported by,

but were directly contrary to the evidence, and the Insurance Company, therefore, prayed that the Court enjoin the enforcement of the Deputy Commissioner's award, because such award was "not in accordance with law" (R. 7).

The Deputy Commissioner filed a motion to dismiss the bill (R. 56-57) and the motion was granted by the Supreme Court of the District of Columbia (R. 58), but the decree of that Court was reversed by the Court of Appeals, which held that "Voehl at the time and place of the injury was not performing any duty in the course of his employment" (R. 72), as more fully set forth in its opinion (R. 69-73), 58 Fed. (2d) 1074-1076.

This Court has granted a writ of certiorari to review the decision of the Court of Appeals (R. 77).

## STATEMENT OF FACTS.

At the hearing before the Deputy Commissioner, besides testimony of a physician as to the injuries, only two witnesses testified, namely, *Hugh L. Finnegan,* Voehl's brother-in-law, who accompanied him in the automobile when the accident occurred, and *C. Leslie McCrea,* Voehl's superior officer, who testified principally concerning the nature of Voehl's duties. In lieu of oral testimony, a written statement signed by Voehl was admitted in evidence by consent (R. 48-50).

### Circumstances Surrounding Accident.

*Finnegan,* who lived half a mile from Voehl's home in Seat Pleasant, Maryland, testified that he was asked

by Voehl to accompany him to the warehouse on the Sunday in question *to get a load of ashes,* which they planned to dump in a mud hole in the road near by (R. 37), Voehl saying that he needed help to lift the big cans of ashes but did not need help in cleaning the warehouse (R. 3, 15). They went to Voehl's home to breakfast, then started in Voehl's automobile for the warehouse and the automobile overturned while Voehl was driving, as a result of a defect in the steering gear, at 52nd Street and Central Avenue N. E. (R. 4, 18).

**Purpose of Trip.**

Finnegan's testimony indicated that the *main object of the trip* was to obtain a load of ashes for Voehl's own purposes (R. 14), and McCrea admitted that "the removal of ashes was not under Mr. Voehl's jurisdiction" (R. 40) and "not even incidental to the operation of the refrigeration department" (R. 30), but according to Voehl's statement, he also intended, when he reached the warehouse, to clean up some trash, which had accumulated there (R. 50), although he should have had his subordinates do such work (R. 49). McCrea testified that Voehl "always insisted on doing too damned much work himself" (R. 32).

**Voehl's Employment and Duties.**

McCrea testified that Voehl was employed under him as "Head of the Products Division" (R. 4, 21). Voehl's duties were two-fold: (1) as *manager of the warehouse,* he supervised unloading and placing refrigerators *in* the warehouse, and delivering and installing them in

customers' homes, and it was his duty to see that the buildings were kept in order and that fire rules were obeyed (R. 4, 22, 48); and (2) as *service manager,* he had charge of the Company's 24-hour-a-day service on refrigerators in customers' homes (R. 4, 22, 48). Voehl had eight men employed under him at the warehouse in addition to several service men to take care of calls (R. 22, 48-49).

Voehl's regular hours were from 7.30 a. m. to 5.30 p. m., but to enable him to take care of service calls, the Company had a telephone installed in his home and when a call came in from a customer after regular store hours, it was relayed to Voehl's home, whereupon Voehl would take care of the call personally or instruct one of the service men to do so (R. 4, 22).

**Allowance for Use of Automobile and Overtime Pay.**

On service calls outside of regular hours, if Voehl used his own automobile, he was allowed overtime pay and five cents per mile from the time he left his home until his return (R. 4, 23).

Voehl received no allowance for use of his automobile going to and from work during the week from Monday to Saturday (R. 30). Voehl stated that he went to the warehouse on Sunday when he considered it necessary and was not required to obtain special authority to do so (R. 49). He claimed that if he made such a trip on Sunday, he would receive his mileage and overtime pay (R. 49).

At the hearing, McCrea was asked to furnish any record he had of mileage and overtime actually paid to

Voehl for work on Sundays and later wrote to the Commissioner that the records for December, 1929, and prior thereto, had been destroyed, and the only record he could find of Voehl being paid for Sunday work was one instance on February 2, 1930, when Voehl came into Washington for three purposes, (1) to remove a refrigerator exhibit from Washington Auditorium, (2) to straighten up the warehouse, and (3) to take an inventory of stock (R. 51).

The evidence will be discussed in more detail as to certain points in the course of the argument below.

**Statute Involved.**

For convenient reference, two pertinent extracts from the Compensation Act (44 Stats. L. 1424, 1425, 1436), are quoted, as follows:

Sec. 2—

> "(2) The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment."

* * * * * * *

Sec. 21—

> "(*b*) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceed-

ings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States."

## QUESTION PRESENTED.

In view of the decision of this Court in *Crowell* v. *Benson*, 285 U. S. 22, did the Court of Appeals have power and was the duty imposed upon it:

1. To review the evidence relating to the *basic or jurisdictional fact of employment*, that is, the evidence upon which the Deputy Commissioner based his *conclusion of law* that the injury arose out of and in the course of Voehl's employment, and

2. To sustain the position taken by respondent, upon that evidence, that Voehl's injury did not arise out of and in the course of his employment; that the Deputy Commissioner was wholly lacking in jurisdiction; that his award was "not in accordance with law" and enforcement thereof should be enjoined?

## ARGUMENT.

**1. Court of Appeals had authority to review evidence relating to jurisdictional fact of employment, upon which Deputy Commissioner based his conclusion of law that Voehl's injury arose out of his employment.**

This first point appears to be fully covered by the recent exhaustive review of this same Compensation Act by this Court in the case of *Crowell v. Benson,* 285 U. S. 22. There the Deputy Commissioner made an award in favor of Knudsen, who claimed that he was an employee of Benson. Suit being brought to enjoin the enforcement of the award on the ground that Knudsen was not *at the time of his injury* an employee of Benson and his claim was not within the jurisdiction of the Deputy Commissioner. The Federal District Judge denied a motion to dismiss the bill, granted a hearing *de novo,* decided that Knudsen was not in the employ of Benson and restrained the enforcement of the award. This decree was affirmed by the Circuit Court of Appeals and by the Supreme Court of the United States.

In the opinion of this Court, Chief Justice Hughes stated:

> "There can be no doubt that the Act contemplates that as to questions of fact, arising *with respect to injuries to employees within the purview of the Act,* the findings of the Deputy Commissioner, supported by evidence and *within the scope of his authority,* shall be final." (Italics supplied.)

But the Chief Justice also clearly explained the distinction between such questions of fact as to the "circumstances, nature, extent and consequences of the injuries," and similar matters, which are within the scope of the Deputy Commissioner's administrative authority, and the *basic or jurisdictional facts* as to whether the injury arose out of and in the course of the employment, saying:

> "Rulings of the Deputy Commissioner upon *questions of law are without finality.*"
>
> * * * * * * *
>
> "The Congress has not expressly provided that the determinations by the Deputy Commissioner of the *fundamental or jurisdictional facts* as to the locality of the injury and the existence of the relation of master and servant shall be final."
>
> * * * * * * *
>
> "If the court finds that the *facts* existed which gave the Deputy Commissioner jurisdiction to pass upon the claim for compensation, the injunction will be denied in so far as these *fundamental questions* are concerned; if, on the contrary, the court is satisfied that the Deputy Commissioner had no jurisdiction of the proceedings before him, that determination will deprive them of their effectiveness for any purpose." (Italics supplied.)

Under Equity Rule 28 of the Supreme Court of the District of Columbia, the Deputy Commissioner's motion to dismiss the bill was equivalent to a demurrer, which admitted that *all facts* alleged in the bill were

true. If the allegation that Voehl's injury did not arise out of his employment was an allegation of *fact*, it was admitted by the motion to dismiss. If that allegation was a *conclusion of law*, such conclusion could be reviewed and reversed in an appropriate Court proceeding.

> "The legal effect of evidence is a question of law."
>
> *I. C. C.* v. *L. & N. R. R. Co.*, 227 U. S. 88, 91.

**2. Assuming that the Court of Appeals had power to review the evidence on the jurisdictional point, it was right in sustaining the position taken by respondent that Voehl's injury did not arise out of his employment and the Deputy Commissioner had no jurisdiction over the case.**

This second proposition leads to a consideration of the *general rule* applicable to such cases.

### General Rule.

### Employee Going to and from Work Not Covered by Compensation Law.

Counsel for petitioner, in his brief, admits and quotes authorities holding that employees injured while going to or from work, are not covered by compensation laws, as a *general rule*.

This general rule has been well expressed, as follows:

> "It is a well-settled general rule that an injury suffered by an employee in going to or

returning from the employer's premises where the work of his employment is carried on, except in special instances not here involved, does not arise out of his employment so as to entitle him to compensation."

*Podgorski* v. *Kerwin*, 144 Minn. 313; 175 N. W. 694;
*Nesbitt* v. *Twin City Forge Co.*, 145 Minn. 286; 177 N. W. 131.

This general rule, with its exceptions, has also been well stated, in Special Bulletin No. 118, issued under date of June, 1923, by the Department of Labor of New York State, reviewing Court decisions construing the New York Compensation Law, which is similar to that involved here, as follows:

"The employee who ordinarily performs no duties for his employer outside the employer's plant or premises and who comes and goes morning and evening between his home and his work-place is in different status relative to the hazards of his traveling from the employee who goes forth from his work-place upon some casual errand for his employer or who travels continuously in his employer's interest. Injury occurring between the employee's home and the employer's premises is not incidental to the employment and, therefore, not compensable, if such injury has no other connection with the employment than the mere coming and going. Special circumstance may, however, link such coming and going up with the employment and so make injury in the course of it compensable; such as, *carrying money for the*

*employer, ingress and egress to and from the work-place, or traveling in a vehicle provided by the employer."*

**Exceptions to General Rule Do Not Apply.**

As above indicated, there are several exceptions to the general rule and counsel for petitioner emphasized such exceptions in the court below, but failed to point out under which one this case should, in his opinion, be classified. A consideration of these exceptions will quickly demonstrate that the **present case does not come within any of them, but is governed by the general rule.**

**First Exception—Voehl Not Close to Employer's Premises.**

An employee may be protected by compensation insurance while he is seeking ingress to or egress from his employer's premises, and while he is *immediately adjacent* thereto, even though he is injured a few minutes before his work is to begin.

*Cudahy Packing Co.* v. *Parramore,* 263 U. S. 418;

*Bountiful Brick Co.* v. *Giles,* 276 U. S. 154.

The present case does not come within this exception, because here the accident occurred *several miles* from the place of employment.

In the English case of *Gilmour* v. *Dorman,* 105 L. T. N. S. 54, the Court referred to an accident which occurred some distance from the place of employment, as follows:

"I cannot regard the case as in any way different from the case where a workman slips on the ice on a public road, a quarter of a mile from his employer's work. It has been repeatedly held that a man is not entitled to the protection of the act when on his way from his home to his work. There may be some difficulty in ascertaining precisely when a workman's employment begins. Generally speaking, the factory, gate or yard indicates the boundary. Sometimes there may be a sort of excrescence, but I am not prepared to hold that an accident which occurred in a field some quarter of a mile distant, separated from the premises where the workman is to work, by land over which he has no right of access, can be deemed to have arisen 'in the couse of' his employment."

**Second Exception—Transportation Not Furnished by Employer.**

It is generally held that where transportation is furnished by an employer as an incident of the employment, an injury suffered by the employee going or coming *in the vehicle so furnished by the employer and under his control,* arises out of and is within the course of the employment, within the meaning of Workmen's Compensation Acts. Many cases supporting this exception will be found in the following notes:

10 A. L. R. 169;
21 A. L. R. 1223;
62 A. L. R. 1438.

Such cases arise where an employer, operating a factory, sends a bus to a certain meeting place to pick

up employees and bring them to the factory, or where a railroad company furnishes a special work train to take employees to work at some distant point. In such cases the bus and its driver, the train and its engineer are under the control of the employer.

In the present case, assuming that Voehl would have been reimbursed or paid five cents per mile for the use of *his* automobile, the vehicle was not furnished by the employer and was not in any way under the employer's control. It is conceded by petitioner in his brief that if the accident had occurred on a week day, Voehl would not have been protected, and so far as this exception to the general rule is concerned, it is difficult to see how the payment of five cents per mile to him on Sundays would bring him within the "course of his employment" any more than reimbursing him for his car fare if he had used a street car or some public conveyance, which was in no way under the employer's control.

*This exception does not apply to a case where the employee is using his own automobile, even though he may be paid by his employer for its use.*

The case of *Artmeyer* v. *Mason,* 220 App. Div. N. Y. 787, is exactly in point. There an expert die and tool maker, superintendent of his employer's plant, lived in Buffalo and worked in East Aurora, driving to and fro *in his own automobile.* He was struck and killed by a railroad train at a highway crossing while on his way to his place of employment. His employer had allowed him an hour in the morning and half an hour in the evening for traveling, the hours at the plant being from 7 a. m. until 6 p. m. and *allowed or paid*

*him ten dollars a week for the use of his automobile.* The referee awarded compensation to his widow, but the Industrial Board rescinded the award and the Appellate Division of the New York Supreme Court unanimously affirmed the Board's action, thereby holding that decedent's death did not arise out of his employment.

The reasoning of the Court in *Grathwohl v. Nassau Point Club Properties,* 216 App. Div. N. Y. 107, affirmed 243 N. Y. Rep. 567, is also most interesting. There the employer owned a real estate development and the claimant was in charge thereof, with several men employed under him. Claimant was required to visit the property every day and *used his own Ford automobile,* supplying the gas and oil, while going from his home to the property. This was taken into consideration in fixing the amount of his wages. While cranking his car preparatory to driving to work, he was injured. In the opinion, the Court said:

> "If the car had been *owned by his employer,* and the claimant had been required to store it nights in his employer's garage at Peconic, the claimant would have been in the course of his employment while cranking it at such garage to take it to his employer's premises. Taking his employer's car to his employer's garage at Peconic would have been the business of his employer. *Taking his own car to his own garage* at the same place was an entirely different matter. It was so taken by him on the night prior to the accident that he might eat, sleep and rest at home, or otherwise divert himself. That was *his own personal business.* Be-

> cause he had thus used it for personal business it was necessary in the morning to crank it and drive it to his employer's premises. That was also his personal business. If the claimant had been injured while *walking* to or from his employer's premises, it is certain that he would not then have been in the course of his employment. It can make no difference that in the instance under consideration he was about to journey to his master's premises *upon fast revolving wheels rather than upon his feet.* It seems to me that the claimant was not in the course of his employment when he was accidentally injured." (Italics supplied.)

The above language is applicable to the present case where Voehl was using his own car, for his own convenience, to travel back and forth between his home and his place of employment. If he had been walking and injured on the street at a point even several blocks from the warehouse, he would have been in no position to claim compensation. The fact that he was on "fast revolving wheels," instead of his feet, can make no difference, especially when the "wheels" belonged to him and not to his employer.

**Third Exception—Voehl not "Travelling Employee" nor on Special Errand.**

Another exception to the general rule occurs when an employee is sent on a service call to the house of a customer, or where the nature of the business requires the employee to travel. Chauffeurs sent on a special errand, or travelling salesmen going from customer to

customer have been held to be acting within the scope of their employments.

Cases involving such "travelling employments" are collected in a note in 36 A. L. R. 474.

Voehl, however, was not engaged in any such *travelling employment at the time of his injury.*

As *service manager,* Voehl was subject to call by telephone to make emergency repairs to a refrigerator at the home of a customer. In that capacity, he was a *travelling employee.* He was not, however, engaged in any such duty *when he was injured.* The fact that *service men* were paid overtime and mileage, while on special errands (making service calls), from the time they left their homes until they returned, is not pertinent to the issue in this case.

Voehl was also *manager of the warehouse* and in that capacity was a *"stationary" employee,* having a fixed place of employment, namely, his employer's warehouse. At the time of the injury, Voehl was in the category of *an employee having a fixed place of employment,* to whom the general rule applied, that is, he was not protected by compensation insurance while going from his home to such fixed place of employment. He had no duty to perform for his employer while *en route* and the vehicle in which he was riding belonged to him and was entirely under his control. The employer had no opportunity to protect itself by having the automobile inspected or by selecting an experienced driver to operate it.

Various Bulletins issued by the Department of Labor of New York State classify accidents arising

under the Compensation Laws as "On Premises" and "Off Premises" accidents. Employees having a fixed place of employment, such as a factory or warehouse, are covered by the Compensation Law only when they are *on the premises* of their employer, or in *immediate proximity* thereto seeking egress or ingress, or being transported to or from work in a vehicle which is under the employers' control. Otherwise only employees whose duties require them to travel are covered when *off the premises* of their employer.

**Method of Paying Wages Does Not Give Rise to an Exception to General Rule.**

Petitioner contends that if Voehl had completed his trip he would have been paid overtime wages from the time he left his home and that he was, therefore, covered by insurance from the moment he left his home.

Respondent does not concede that this is an exception to the general rule. The method by which an employer pays his employee his wages is not the determining factor upon the question whether the employee is acting within the scope of his employment at a certain time. This is emphasized in the following cases reviewed above:

*Stimal* v. *Jewett & Co.*, 198 App. Div. N. Y. 427;
*Artmeyer* v. *Mason*, 220 App. Div. N. Y. 787.

If, instead of paying his employee by the month or by the week, an employer should say to him "I am paying you 20 cents per hour, or $4.80 per day of 24 hours,

because I expect you to be subject to call at any time." In such a situation, could it be said that the employee could recover if he fell out of bed in the middle of the night, merely because the accident occurred *during the hours for which he was paid?* Would an employee, so paid, be covered by the Compensation Act every minute of every day from the moment he steps out of the front door of his home on his way to his place of employment?

The liability of the insurance carrier cannot be so extended by an employer adopting such method of paying wages.

**An Employee is Not Protected by Compensation Act Unless the Injury Arose Out of AND in the Course of the Employment.**

The phrase "arising out of *and* in the course of employment" is in the conjunctive. The terms "out of" and "in the course of" are not synonymous, and if either of these elements is missing, there can be no recovery. The words "out of" refer to the origin or cause of the accident, and the words "in the course of" to the time, place, and circumstances under which it occurred.

L. R. A., 1916-A, p. 232.

Chief Justice Rugg, in a well considered opinion in *McNicol's* Case, 215 Mass. 497, said:

> "In order that compensation may be due the injury must both arise out of and also be received in the course of employment. Neither alone is enough."

* * * * * * *

> "It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It 'arises out of' the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a *causal connection* between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The *causative danger must be peculiar to the work, and not common to the neighborhood.* It must be incidental to the character of the business, and not independent of the relation of master and servant."

As Voehl was not performing any duties for his employer at the time and place of the accident, his injury did not occur "in the course" of his employment. As the *cause* of the accident was a cause over which the employer had no control and which was in no way connected with any of Voehl's duties, the injury did not "arise out of" the employment.

**Voehl's Injury was Caused by Ordinary Traffic Hazard.**

When the claim was first presented to him, the Deputy Commissioner made a careful and correct analysis of the case, as set forth in a letter written by him under date of July 2, 1930, (R. 8). In that letter, he stated in substance that, upon the evidence then presented to him (prior to the hearing), it appeared that (1) Voehl was injured while travelling from his home to his employer's place of business; (2) it was presumed that he reported to that place daily, *using his own car;* (3) he was paid mileage for the use of his car on special errands, but he was not shown to have been on a special errand *for his employer* at the time of his injury; (4) it was not shown that the employer provided the means of transportation, and (5) "the hazard to which the claimant was subjected at the time he was injured was a *traffic hazard* and *not* one incidental to his occupation" (R. 8).

"If these facts are correctly stated, it would not seem that the injury arose out of or occurred in the course of employment. If, however, there are other facts which would alter the status of the case, they should be submitted for further consideration by this office" (R. 8-9).

The evidence subsequently offered at the hearing on December 11, 1930, did not alter the status of the case and the Deputy Commissioner's *first conclusion,* above set forth, is fully supported by the entire evidence.

> "The employee is not insured generally against accident while working for the street

> railway corporation. At home or on the street he may meet with accident not arising out of or in the course of his employment. The act does not cover such cases. The employee gets up in the morning, dresses himself, and goes to work, because of his employment; yet if he meets with an accident *before coming to the employer's premises,* or his place of work, *that is not a risk of his occupation, but of life generally.''*
>
> *De Voe* v. *New York State Railways,* 218 N. Y. 318.

Similarly, in the case of *New Amsterdam Casualty Co.* v. *Hoage,* 60 App. D. C. 40; 46 Fed. (2d) 837, the decedent lost his life as the result of being struck by a street car, a *traffic hazard* in no way connected with his employment, and the Court of Appeals promptly held that the award made by the Deputy Commissioner should be set aside.

Petitioner, in his brief, calls attention to a second case having the same title, *New Amsterdam Casualty Company* v. *Hoage,* decided November 28, 1932, and not yet reported, in which the Court of Appeals of the District of Columbia said:

> "It is now held by the greater weight of the authorities that if an employee *in the course of his employment has to pass along the public streets* and thereby sustains an accident by reason of the risks incident to the streets, the accident 'arises out of' as well as 'in the course of' his employment." (Italics supplied.)

The phrase italicized above shows that the Court was extremely careful to limit the rule to cases where the "*employee in the course of his employment has to*

*pass along the public streets,"* referring to so-called *travelling employees,* such as chauffeurs, bank runners, travelling salesmen, hereinbefore mentioned, the nature of whose employment requires them to pass along the public streets. In the case just cited, the injured employee was

> "a solicitor for a newspaper and *his duties required him to go from place to place within the city.* This implied that his travels might properly be made on foot and that he might traverse the sidewalks and the streets of the city *in the course of his employment."* (Quoting from unreported opinion, italics supplied.)

The Court then reviewed the cases of *Schroeder & Daly Co.* v. *Ind. Com. of Wisconsin,* 169 Wis. 567, in which the injured was a *salesman* who was required to go from place to place in a city; *McCulloch* v. *Pittsburgh Plate Glass Co.,* 107 Conn. 164, in which a *travelling salesman* was injured on a street, and *Mausert* v. *Albany Builders' Supply Co.,* 250 N. Y. 21, where a *teamster,* while driving his horses on a street, fell from his seat and was killed. All of these were *travelling employments.* Voehl, however, having a fixed place of employment at the warehouse, was not required to pass along the public streets *in the course of his employment.* According to petitioner's contention, Voehl intended to clean up the warehouse, but that duty could be performed only *at* the warehouse.

**Main Object of the Trip.**

Finnegan's testimony shows that the main object of Voehl's trip was to get a load of ashes for his own pur-

poses, to dump in a mud hole near his home (R. 14, 37), the removal of the ashes being no part of his duty to his employer (R. 30, 40). While on the first aid table immediately after the accident, Voehl was worrying about the ashes, "that was the only thing that bothered him" (R. 14). Voehl claimed that he also intended to clean up some trash that had accumulated in the warehouse, but that was not the main object of the trip.

The situation is similar to that involved in the case of *Marks* v. *Gray,* 251 N. Y. 90, where Marks was a helper in the service of a plumber, and his wife went to a nearby town to visit upon the understanding that Marks would call for her at the end of his day's work. His employer, hearing of the proposed journey, asked him to take his tools and fix some faucets in a dwelling in the town where his wife was visiting. While using *his own or his father's car* on the trip, he was injured in a wreck. The Court held that Mark's *main object in making the trip* was to call for his wife; that his employment did not cause him to make the journey or expose him to its risks and his injury did not arise out of his employment.

**Burden of Proof.**

At the end of his brief, petitioner refers to Section 20 of the Compensation Act providing:

> "In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary—(*a*) that the claim comes within the provisions of this Act."

Such presumption, however, is not "a substitute for facts" or a "substitute for proof." The burden is always upon the claimant to produce substantial evidence to prove that the injury arose out of and in the course of his employment.

*Collins* v. *Brooklyn Union Gas Co.*, 171 App. Div. N. Y. 381;
*Eldridge* v. *Endicott*, 228 N. Y. 21.

**Opinion of Court of Appeals.**

At the oral argument of this case in the Court of Appeals on April 7, 1932 (R. 69), the opinion theretofore rendered by this Court on February 23, 1932, in the case of *Crowell* v. *Benson*, 285 U. S. 22, was fully discussed. The Court of Appeals understood that, under the decision in *Crowell* v. *Benson*, it not only had the right, power and authority, but was under a positive obligation and duty to review the evidence relating to the *basic, fundamental, jurisdictional fact* as to whether the relation of master and servant existed at the time of Voehl's injury.

After carefully reviewing such evidence, the Court of Appeals found that Voehl

> "Was on the way from his home to the warehouse of his employer to get a load of ashes which they planned to dump in a mudhole in the road near Voehl's residence. The evidence discloses *beyond dispute* that the *main object* of the trip was to obtain the load of ashes" (R. 70). (Italics supplied.)

The Court of Appeals approved the *general rule* that an injury suffered by an employee going to and from his employer's premises, where the work of his employment is carried on, does not arise out of his employment so as to entitle him to compensation (R. 71).

The Court then discussed the exceptions to the general rule and held that the instant case did not belong within any of the exceptions. Voehl was not immediately adjacent to his employer's premises, but several miles distant therefrom. The vehicle was not furnished by or under the control of the employer, but was Voehl's own automobile and exclusively under his control. While, as service manager, Voehl was subject to call to go on special errands to take care of customers' refrigerators, he "was not engaged in that sort of service when the accident occurred" (R. 72).

The court then summarized its conclusion, which was fully supported by the evidence, as follows:

> "The evidence clearly established, we think, that the purpose of the trip on the Sunday morning of the accident was to procure a load of ashes for Voehl's personal use, and that if in fact he intended to remove some trash, this was merely incidental to the general purpose for which the trip was made. *Voehl at the time and place of the injury was not performing any duty in the course of his employment.*" (Italics supplied.)

The sentence last quoted and italicized, whether it be defined as a *jurisdictional fact* or a *conclusion of law,* was a matter for the court to decide. The rulings

of a deputy commissioner upon internal administrative matters, such as questions relating to the nature and extent of the injuries, which plainly come *within* the purview of the Compensation Act, are final, but, when he attempts to decide the question of employment or non-employment, upon which his jurisdiction depends, his action may be reviewed by the court specifically designated by Section 21*b* of the Compensation Act, which prescribes the procedure by which the enforcement of an award in such a case may be enjoined, when the award is "not in accordance with law."

## CONCLUSION.

Under the decision in *Crowell* v. *Benson,* 285 U. S. 22, the Court of Appeals had full power and authority to consider the evidence set forth in the exhibit forming part of the bill of complaint and was right in holding that "Voehl at the time and place of the injury was not performing any duty in the course of his employment" (R. 72) and that the "cause of the accident was too remote to bring the case within the provisions of the Compensation Act" (R. 73). This conclusion agrees with the conclusion first reached by the Deputy Commissioner (R. 8).

If petitioner's contention should be sustained, then every employee, stenographer, clerk, and laborer, who goes to the office, warehouse or store of his employer on a Sunday, outside of his regular hours of work on week days, would be covered by compensation insurance from the moment he leaves his home, whether he travels on foot, in his own automobile or in a public

vehicle, and, if that is so, the coverage might as well extend to the hazard of descending the stairs from the second to the first floor of his home, and then extend back to the perils of his bathroom, while dressing in the morning. Certainly, the legislative authority, in enacting the Compensation Law, intended no such absurd result.

The line of coverage must be drawn somewhere, according to common sense and reason. The line of coverage has been drawn, in many cases above cited, including a recent decision of this Court, at a point on the employer's premises, or "those of another in such *proximity* and relation as to be in practical effect a part of the employer's premises."

*Bountiful Brick Co.* v. *Giles,* 276 U. S. 154, 158.

While Voehl was driving his own automobile from his home to his employer's warehouse, he was within the general rule that employees are not covered by compensation insurance while going to and from their place of work, and, as shown above, none of the exceptions to the rule are applicable to the situation here involved.

It is confidently asserted that counsel for petitioner will be unable to cite a *single case* that goes to the extent of awarding compensation to an employee who was injured, several miles from his destination, while using his own automobile on his way from his home to a fixed place of employment.

It is, therefore, respectfully submitted that the decree of the Supreme Court of the District of Columbia

dismissing respondent's bill of complaint to enjoin enforcement of the Deputy Commissioner's award should be reversed, and the judgment of the Court of Appeals so ordering, should be affirmed.

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